

**MINUTES OF THE JOINT MEETING
OF THE EDINA HOUSING AND REDEVELOPMENT AUTHORITY AND
THE EDINA CITY COUNCIL
HELD AT CITY HALL
FEBRUARY 18, 1997**

A joint meeting of the Edina Housing and Redevelopment Authority and the City Council was convened to consider the possible acquisition of the Lewis Engineering and Kunz Oil (Parts Plus) properties. Action was taken by the HRA and Council as recorded.

ROLLCALL Answering rollcall were Commissioners/Members Faust, Hovland, Kelly, Maetzold and Chairman/Mayor Smith.

CONSENT AGENDA ITEMS APPROVED Motion of Commissioner/Member Maetzold and seconded by Commissioner/Member Hovland approving the HRA Consent Agenda as presented.

Rollcall:

Ayes: Faust, Hovland, Kelly, Maetzold, Smith

Motion carried.

MINUTES OF THE HRA MEETING FEBRUARY 3, 1997 APPROVED Motion of Commissioner/Member Maetzold and seconded by Commissioner/Member Hovland approving the Minutes of the Regular HRA Meeting of February 3, 1997.

Motion carried on rollcall vote - five ayes.

MODIFICATION OF CONDITIONS OF EDEN OFFICE PARK FINAL PLAT APPROVED BY COUNCIL/HRA RESOLUTION APPROVED AUTHORIZING ACQUISITION OF THE GRANDVIEW AREA (LEWIS ENGINEERING/ KUNZ OIL (PARTS PLUS) PROPERTIES) BY EMINENT DOMAIN, AMENDMENT TO GRANDVIEW AREA TIF DISTRICT PLAN AUTHORIZED AND PUBLIC HEARING DATE SET

Executive Director/Assistant Manager Hughes reminded the HRA/Council on February 3, 1997, they had been advised of development with respect to the Lewis Engineering and Kunz Oil (Parts Plus) Properties. At that time, staff was directed to prepare a report concerning the possible acquisition of the Properties by the HRA. Requested information included: legal issues, financial issues, planning issues, resale issues as well as a time schedule for undertaking the acquisition.

Executive Director/Assistant Manager Hughes explained the Lewis Engineering property comprises approximately 275,000 square feet of area and is developed with a one-story masonry and steel industrial building measuring approximately 25,600 square feet in floor area. The building was constructed in the late 1950s and has been vacant for several years. The Kunz Oil (Parts Plus) property measures approximately 91,000 square feet in area and is occupied by a building measuring approximately 32,000 square feet in floor area. This building is occupied by Kunz Oil (Parts Plus) and is an auto parts distribution business. Executive Director/Assistant Manager Hughes presented an aerial photograph illustrating the subject properties.

In 1996, the Council approved the final development plan and final plat for a proposed redevelopment of the properties. The approved plan provided for an expansion of the Kunz (Parts Plus) building by approximately 17,000 square feet of floor area. The plan for the Lewis property illustrated several small office building's comprising a total floor area of approximately

80,000 square feet. In order to accomplish the plan, approximately one acre of property must be conveyed from Lewis to Kunz in order to provide a more logical arrangement of the individual parcels. Executive Director/ Assistant Manager Hughes presented the information requested February 3, 1997 as follows.

Financial Issues:

N. Craig Johnson, Real Estate Appraiser, at staff's request provided a preliminary estimate of the present market value of the Lewis Property. Due to a potential conflict of interest, an opinion was not presented for the Kunz Oil (Parts Plus) property. In 1990, the HRA sought similar value opinions of these properties. At that time, the Kunz Oil property value was estimated at \$900,000.

The properties are located within the Grandview Tax Increment Financing District. Under current law, increments generated by this district are available for re-paying the HRA's cost of acquisition. At the present time, the HRA does not possess adequate fund balances to finance the cost of acquisition without borrowing. If the HRA wished to acquire the properties, the City would be required to issue general obligation bonds to be repaid from increments received from this tax increment financing district. The bond sale would require approximately sixty days.

Legal Issues:

Attorneys Gilligan and Boelter, Dorsey and Whitney, submitted a memo outlining steps necessary to acquire the properties via condemnation assuming the HRA is unable to acquire the properties through negotiation. Based upon the memo, staff estimates a full condemnation proceeding could take nine to ten months to complete, provided neither party appeals the commissioner's award.

The properties are located within the Grandview Tax Increment Financing District that was established in 1984. Although the redevelopment plan for this tax increment district referred to the possible acquisition of the properties, the City has never adopted a "project for the acquisition of these properties. Attorney Gilligan advised an amendment to the tax increment financing plan must be prepared identifying the acquisition of the properties as a project to be undertaken by the HRA. Under State Law, the project plan must be circulated to Hennepin County and the Edina School District at least thirty days before adoption. Based upon these notice requirements, the earliest the HRA could consider the plan amendment would be April 7, 1997. The HRA could enter into negotiations to acquire the property, but it could not conclude the acquisition until the tax increment financing plan is amended.

Planning/Property Disposition Issues:

If the HRA acquires the properties, a method must be determined for reselling the properties for redevelopment purposes. In staff's opinion, it would be appropriate to select a developer through a request for proposal (RFP). RFPs would be sent to a number of developers the HRA believes have the substance and expertise to undertake development of the properties. The RFPs would request a statement of qualifications, a vision for the development of the properties and other items of interest to the HRA. Following selection of the developer, the HRA would attempt to negotiate a redevelopment agreement for the resale and subsequent development of the properties.

In the planning perspective, staff believes the HRA should solicit housing development proposals, office proposals or a combination of these two uses. Other potential uses can also be considered during the process.

Action Steps:

Two actions would need to be taken if the HRA approves proceeding with the acquisition. First, the HRA should adopt a resolution authorizing acquisition of the properties by eminent domain. If necessary. The resolution would provide staff the authority to attempt to negotiate purchase agreements with the owners of the properties. Such purchase agreements would be submitted for HRA review and approval at a future meeting. Second, the HRA should authorize staff to prepare the necessary amendments to the tax increment financing plan for the Grandview Tax Increment Financing District to permit acquisition of the properties. This amendment must be circulated to the Edina School District and Hennepin County at least 30 days prior to adoption by the City. Staff suggested if the plan is authorized, the HRA would meet April 7, 1997, to consider the amendments.

Philip Boelter. Attorney with Dorsey and Whitney, gave an overview of their memorandum and the executive steps required to condemn the parcel through the power of eminent domain. Those steps are as follows:

- 1) Hire an Appraiser
 - 2) Hire Other Experts Needed to Evaluate the Property to be Condemned
 - 3) Determine Whether a Taking is Desirable
 - 4) Prepare and File Petition With Hennepin County District Court
 - 5) Hennepin County District Court Hears Evidence in Support of or Against Granting Petition
 - 6) If Petition is Granted, Judge Appoints Three Commissioners and Two Alternate Commissioners and Sets Out by Order the First Meeting Date
 - 7) Commissioners Determine the Damages Which Will be Sustained by The Owners of the Property
 - 8) The Viewing
 - 9) Commissioners' Hearings
 - 10) Post-Hearing Procedures
 - 11) Appeal of Commissioners Award
 - 12) Condemnor Pays Judgment
- Miscellaneous Points of Interest;
- 1) Abandonment of Condemnation
 - 2) Award of Relocation Expenses

Commissioner/Member Maetzold asked what risk the City has in taking only one parcel. Attorney Boelter answered there is no requirement that both parcels must be taken. Mr. Maetzold asked if inverse condemnation is a definite risk. Attorney Boelter responded that the process does incur expenses and the tax rolls would show the parcels as City property. It would be advantageous to sell the property as soon as possible to get the tax dollars.

Commissioner/Member Faust inquired what legal costs would be incurred with the acquisition as well as the cost of hiring an appraiser. Attorney Boelter replied fees could range from \$50,000 to \$100,000 depending upon the nature of the dispute and the advice of experts necessary in preparation for a hearing. Executive Director/Assistant Manager Hughes noted staff would do the appraisal. Commissioner/Member Faust asked what the liability would be to Kunz if a buyer of the property is scared off. Attorney Boelter responded there would be no negative impact only an inverse condemnation.

Commissioner/Member Hovland asked about the basis for the taking. Attorney Boelter said the

City must show proper public purpose for the property. In his opinion property owners are rarely if ever successful disputing a public purpose of the taking. Commissioner/Member Hovland asked if the taking would include relocation funds for Kunz Oil (Parts Plus). Attorney Boelter said Lewis Engineering has already relocated but the City would like to keep Kunz Oil in Edina and relocation expenses could be a possibility.

Executive Director/Assistant Manager Hughes stated if the City were to acquire the property, requests for proposals could be solicited from developers requesting their visualization for the site to include both office and housing. He outlined the following action steps necessary for acquisition: approval of a resolution authorizing acquisition of the property by eminent domain, authorizing staff to prepare necessary amendments to the Grandview Tax Increment Financing plan and setting a hearing date of April 7, 1997, to consider the Tax Increment Financing amendment. Executive Director/Assistant Manager Hughes added the Legislature is currently in session and a new tax increment law could be forthcoming.

Chairman/Mayor Smith asked what costs would be incurred with a bond issue. Attorney Gilligan said approximately 2% or around \$50,000. Executive Director/Assistant Manager Hughes noted a bond sale would take 120 to 150 days and following the sale it could take two years before tax increments are generated.

Commissioner/Member Kelly said he could understand a developer proposing an office use for the site but questioned if any interest could be generated in a mixed use development. Executive Director/Assistant Manager Hughes said staff believes a developer interested in a mixed use development can be found.

Commissioner/Member Maetzold asked if there is any danger the newly generated increment would not cover the debt service. Executive Director/Assistant Manager Hughes stated the Grandview Tax Increment Financing District is currently generating excess increments and over a period of time, it should be able to support the debt service. However, property tax reform, if enacted, could impact the district.

Commissioner/Member Maetzold questioned whether a use must be specified when the Grandview Tax Increment Financing District plan is amended. Executive Director/Assistant Manager Hughes explained the HRA must establish a project and at most a budget for the project, but need not specify a use.

Commissioner/Member Hovland asked if the HRA amends the Grandview Tax Increment Plan does a danger exist that either Hennepin County or the School District could disprove the amendment. Attorney Gilligan explained the HRA is the only approving body, the County and School District may comment on the amendment but they have no veto power.

Eden Office Park Final Plat Modifications Presentation by Planner

Planner Larsen gave background information regarding Eden Office Park. The redevelopment plan and final plat approved by the City Council in July 1996, for the Kunz-Lewis redevelopment included a land trade between the two property owners. The land trade increased the size of the Kunz Oil property from two to three acres, and provided the land area to allow the expansion and upgrading of the existing Kunz Oil warehouse. Owners of Kunz Oil have informed staff they want to proceed with the land trade and the property improvements previously approved by the City. However, the conditions imposed at the time of final plat approval do not allow the Kunz Oil improvements to proceed independent of the approved redevelopment of the Lewis Engineering property.

Planner Larsen pointed out if the Council allows the Kunz Oil improvements to proceed; It will be necessary to modify several conditions imposed at the time of final plat approval. Staff suggests:

- Allowing the subdivision dedication obligation (\$80,000) to be deferred until development occurs. Staff understands a private agreement exists between Kunz-Lewis addressing responsibility for payment of the subdivision dedication.
- Modifying the Developers Agreement allowing stormwater management plans to be implemented in phases. The modification has been reviewed by the Engineer for the Nine Mile Creek Watershed District and meets approval.
- Dedication of a 30 foot wide easement connecting Eden Circle to Eden Avenue but roadway improvements be deferred on the Lewis property until it is developed. The easement would be improved on the Kunz property.

Planner Larsen noted If the Council approves the foregoing modifications, the new plat could be recorded and Kunz Oil could proceed with their project.

Chairman/Mayor Smith asked if the City requires a developers agreement. Attorney Gilligan answered the City would have a developers agreement with only Kunz Oil.

Commissioner/Member Kelly questioned the location of the easement. Planner Larsen explained the easement is adjacent to the railroad property running northerly to Eden Avenue.

Commissioner/Member Maetzold inquired what impact modifications to the Eden Office Park Final Plat would have on any future eminent domain proceedings? Attorney Boelter replied the properties are currently zoned industrial. However, the owners may argue the properties should be valued at a higher commercial value.

Commissioner/Member Kelly noted the Lewis property is purported to have a purchase agreement on it so a value has been set. Planner Larsen stated the City has not been privy to any purchase agreement, therefore we have no concrete knowledge of its contents.

Mayor Smith invited public comments.

Public Comment

Walter Kunz, Kunz Oil, stated they are content to stay at their present location and he views the potential condemnation as a side issue. Mr. Kunz said the process really began in August of 1995 when Kunz Oil initially requested final development plan approval for a proposed addition, former Mayor Richards asked Kunz Oil to wait until the entire Kunz and Lewis properties could be redeveloped together. Mr. Kunz stated he waited, but does not want to wait for a time consuming condemnation process. He would like the city to move forward with the modifications to the Eden Office Park Plat, allowing him to develop his property independently and begin building in July of this year.

No further public comments were received.

Chairman/Mayor Smith stated the Council must act on the Eden Office Park issue before deciding whether to move forward with condemnation.

Commissioner/Member Kelly expressed concern allowing Kunz Oil to proceed. He stated the need for further information before making a judgement and suggested since the properties are

subject to redevelopment it would be better to attract a developer if the entire site were available.

Commissioner/Member Faust questioned if approving the suggested modifications were too hurried, although she supports the Kunz Oil redevelopment proposal.

Commissioner/Member Maetzold stated his opinion that it is appropriate to approve the Eden Office Park Final Plat modifications, but acknowledged concern over potential liability if condemnation proceeds.

Chairman/Mayor Smith offered background information that when the previous council approved the Eden Office Park Final Plat, they sought improved traffic circulation. He noted even with the suggested modifications traffic will be improved. Further, the land transfer would clean up the site and he observed that Kunz Oil could conceivably apply for a building permit to their property, as it exists today, eliminating any opportunity to improve the traffic patterns or land configurations.

Commissioner/Member Kelly acknowledged other opinions, but repeated his deep concerns that granting modifications to the Eden Office Park final Plat may limit development of the overall site. If the Kunz Oil redevelopment is allowed to occur and the Lewis property condemnation proceeds the City may find the Lewis property is not financially viable to redevelop.

Chairman/Mayor Smith pointed out that Kunz Oil can enhance their property with or without waiting for the redevelopment plan to move forward.

Commissioner/Member Faust asked how the thirty foot easement will be improved. She questioned whether a dirt road would detract from potential redevelopment of the Lewis property? Planner Larsen replied that if the modifications are approved the roadway could be improved on the Kunz property but improvement deferred on the Lewis property until such time as it is developed.

Commissioner/Member Hovland asked where the mini-storage warehouses were proposed to be placed on the Lewis site and would a land swap (if allowed) make the Lewis Property more valuable? Planner Larsen responded that staff has not seen any site/development plan or purchase agreement so he could not accurately place their proposed location. Executive Director/Assistant Manager Hughes stated he believes R. Craig Johnson's appraisal was fair, and the unusual shape of the Lewis property will be improved by a land swap making future development less ominous.

Commissioner/Member Faust stated her support of the modifications because she believes it will improve the overall developability of the property.

Commissioner/Member Hovland supports honoring past actions of the Council.

Mayor Smith entertained a motion from the City Council regarding the Eden Office Park Plat modifications as per the staff memo without rezoning the existing Planned Industrial District into Planned Office District.

Commissioner/Member Kelly stated he will not support approving the modifications because he

believes the action is premature at this time and feels the need for more information.

Member Maetzold made a motion approving modifications of conditions of Eden Office Park final plat conditioned upon; 1) Subdivision Dedication fee of \$80,000 deferred until the development occurs; 2) Modification of the Developer's Agreement allowing stormwater management plans to be implemented in phases according to Nine Mile Creek Watershed District approval; and 3) Dedication of a 30-foot wide easement connecting Eden Circle to Eden Avenue deferring roadway improvements on the Lewis property until development occurs. Motion seconded by Member Hovland.

Rollcall:

Ayes: Faust, Hovland, Maetzold, Smith

Nays: Kelly

Motion carried.

Chairman Smith entertained a motion from the HRA regarding the pursuit of condemnation through eminent domain if necessary.

Commissioner Hovland introduced the following resolution and moved its approval:

RESOLUTION

WHEREAS, it is necessary, advisable, and in the public interest that the Housing and Redevelopment Authority of Edina, Minnesota (the "HRA"), a body politic and corporate under the laws of the State of Minnesota, acquire for redevelopment purposes and pursuant to the redevelopment plan entitled, "Grandview Area Redevelopment Plan" dated May 30, 1984, (the "Redevelopment Plan"), adopted by the HRA on June 18, 1984, property within the Grandview Redevelopment Area; and

WHEREAS, in order to accomplish the objectives and purposes set out in the Redevelopment Plan, it is necessary that the properties described on Exhibit A attached hereto and hereby made a part be redeveloped; and

WHEREAS, the HRA has been advised that said property will not be made available for redevelopment in a manner that would meet the objectives and purposes of the Redevelopment Plan unless it is acquired by eminent domain; and

WHEREAS, in order to provide for the redevelopment of said property in a manner that would meet the objectives and purposes of the Redevelopment Plan, it will be necessary to procure the same by the right of eminent domain.

NOW, THEREFORE, BE IT RESOLVED, that in order to provide for the redevelopment of the property described on Exhibit A hereto in a manner that would meet the objectives and purposes of the Redevelopment Plan the HRA proceed to acquire the property described on Exhibit A hereto under its power of eminent domain and that the attorneys for the HRA be instructed and directed to file the necessary petition therefor and to prosecute such action to a successful conclusion, or until it is abandoned, dismissed or terminated by the HRA or the Court; and the attorneys for the HRA, the Director and Executive Director of the HRA and the Chairman and Secretary of the HRA do all things necessary to be done in the commencement, prosecution and successful termination of such eminent domain proceeding.

BE IT FURTHER RESOLVED, that none of the foregoing actions to acquire the property described on Exhibit A hereto be started or undertaken until the Grandview Area Tax Increment Financing Plan of the HRA is amended in accordance with Minnesota Statutes 469.175, subd. 4, to designate the property described on Exhibit A as property to be acquired by the HRA and to authorize an increase in tax increment expenditures to

pay the costs of acquisition and redevelopment of such property.

BE IT FURTHER RESOLVED, that it is hereby found and declared that the acquisition of the property described on Exhibit a hereto by the HRA under its power of eminent domain is necessary to redevelop blighted and substandard areas in the Grandview Redevelopment Area.

EXHIBIT A

Lewis Property

That part of Lot 1, Block 1, "Edenmoor, Hennepin County, Minnesota", lying North of the South 6 feet of said Lot 1, according to the recorded plat thereof.

AND

That part of Lot 1, Block 1, Wanner Addition, lying Northerly of a line described as beginning at a point on the East line of said Lot 1, distant 23.4 feet northerly from the Southeast corner of said Lot 1; thence Westerly parallel with the South Line of said Lot 1 a distance of 101 feet; thence Southerly parallel with said East line of Lot 1 a distance of 22.4 feet; thence Westerly parallel with said South line of Lot 1 to the West line of said Lot 1 and there terminating, according to the recorded plat thereof, Hennepin County, Minnesota.

AND

That part of Government Lot 8, Section 28, Township 117, Range 21, lying Southerly of the Southerly right-of-way line of Eden Avenue and Westerly of the Westerly right-of-way line of the Soo Line Railroad Company, formerly the Minneapolis, Northfield and Southern Railway, which lies Easterly of a line described as beginning at the intersection of the South line of said Government Lot 8 with the East line of Block 1, Wanner Addition; thence Northerly along said most Easterly line and its Northerly extension to a point 25 feet Northerly along said most Easterly line and its Northerly extension to a point 25 feet Northerly from the Northeast corner of Lot 2, in said Block 1, thence Westerly parallel with the North line of said Lot 2 to the East line of Lot 1, in said Block 1; thence Westerly parallel with the North line of said Lot 2 to the East line of Lot 1, in said Block 1; thence Northerly along said East line of Lot 1 and its Northerly extension to said Southerly right-of-way line of Eden Avenue and there terminating, according to the Government Survey thereof.

Kunz Oil Property:

Lot 2, Block 1, Wanner Addition, Hennepin County, Minnesota.

AND

That part of Lot 1, Block 1, of said Wanner Addition described as follows: Beginning at the Southeast corner of said Lot 1; thence north along the East line of said Lot 1, a distance of 23.4 feet; thence West parallel with the South line of said Lot 1 a distance of 101 feet; thence South parallel with the East line of said Lot 1, a distance of 22.4 feet; thence West parallel with the South line of said Lot 1 to the West line of said Lot 1; thence South along the West line of said Lot 1, a distance of 1 foot to the Southwest corner of said Lot 1; thence East along the South line of said Lot 1 to the point of beginning.

AND

That part of Government Lot 8, Section 28, Township 117 North, Range 21 West, Hennepin County, Minnesota, described as follows: Beginning at a point located on a line drawn between the following described points: Point One located on a line parallel with and distant 221.8 feet East of the West line of said Government Lot 8, which point is distant South 259.4 feet from the intersection of the center line of Eden Prairie Road and

said line; and Point Two located on the South line of said Government Lot 8, 246.8 feet East of the southwest corner of said Government Lot 8, said point of beginning being 647.9 northerly from the south line of said Government Lot 8; thence Northerly along said drawn line 25 feet; thence Easterly and at right angles a distance of 90 feet; thence Southerly and parallel with said drawn line 25 feet; thence Westerly and at right angles to point of beginning. Commissioner Kelly seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Kelly, Maetzold, Smith

Resolution approved.

Commissioner Faust made a motion authorizing staff to prepare amendments to the Grandview Tax increment financing district to permit the acquisition of the properties and setting a public hearing for April 7, 1997, to consider the amendments. Commissioner Kelly seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Kelly, Maetzold, Smith

Motion carried.

CLAIMS PAID Commissioner Maetzold made a motion to approve payment of the HRA Claims as shown in detail on the Check Register dated February 12, 1997, and consisting of one page totaling \$65,157.66. Commissioner Kelly seconded the motion.

Rollcall:

Ayes: Faust, Hovland, Kelly, Maetzold, Smith

Motion carried.

There being no further business on the HRA Agenda, Chairman Smith declared the meeting adjourned.

Executive Director